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Date 7/23/90

Surname [REDACTED]

EIN: [REDACTED]
Key District: [REDACTED]

JUN 01 1990

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted shows that you were incorporated in the State of [REDACTED] on [REDACTED]. Your purpose is to provide a financial vehicle for individuals to set aside contributions on a yearly basis, to designate the income beneficiary yearly and to direct the principal to a chosen charity upon death or other specified time. You have indicated that your plan combines the features of a community trust, a charitable lead annuity trust and a charitable remainder annuity trust by permitting the taxpayer continued control over the income beneficiary as well as the ultimate beneficiary. Contributions to your organization will be pooled and investments made but separate accounts will be maintained in a manner similar to a community trust fund. Pursuant to your Charter and your literature, the income and ultimate beneficiaries of any individual account may be designated yearly but must be exempt under section 501(c)(3) of the Code at the time the funds are disbursed. Under no circumstances will any funds be returned to the individual contributor.

The information further indicates that you are an outgrowth of [REDACTED]. Your Board of Directors consists of [REDACTED], the owner of [REDACTED] and several of the money managers on his staff. [REDACTED] has been in the life insurance business for [REDACTED] years. [REDACTED] is the marketing arm of [REDACTED]'s life insurance agency. [REDACTED] represent [REDACTED] or [REDACTED]

major life insurance companies in the areas of estate planning, deferred compensation, and charitable giving. Agents that work with the Company contact prospects and policyholders about planning in these areas.

██████████'s interest in charitable giving was sparked, in part, by questions from clients of his business. These individuals were interested in giving old life insurance contracts to charities, designating dividends to be paid yearly to a chosen charity, and/or to accumulate dividends to increase the death benefit to be donated to charity at a future date. Some of his clients were hesitant to make such transfers because they were afraid that the charity would change in character before the ultimate payout of the policy. This organization, ██████████, was created as a way to hold onto control of the charitable funds until actual disbursement while taking a current charitable deduction.

In response to our requests for information, you indicated that the ██████████ counselors will handle the investment of the ██████████ funds. This service will be provided at no charge. In addition, ██████████ will share office space, software, and presumably personnel with ██████████. The only fees incurred will be an administrative charge of \$████ per check for disbursement of the funds plus a pro rata share of audit expenses to be charged to each account.

You have indicated that through your unique approach to charitable giving, you intend to increase donations to charity. In response to our questions as to whether you would operate as a community trust or a private foundation for a few select clients, you indicated that you have no idea how many contributors you may attract. You apparently have no plans to operate as a community trust or to appoint a community Board of Directors. You were unable to provide financial information in great enough detail to assist us in determining that you would be other than a private foundation as defined in section 509 of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for purposes described in section 501(c)(3) unless it serves a public rather than a private interest. This section further provides that in order to meet the public interest requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The requirement that an exempt organization be operated for public rather than private benefit is but another way of requiring that it be operated exclusively for exempt purposes. It is a factual issue. The regulations, however, place the burden of proof on the organization seeking exemption to demonstrate that it is not organized or operated for the benefit of private interests.

Court decisions and Service rulings stress three major points in attempting to resolve whether an organization is operated for public purposes. First, an organization is exempt on the basis of its purposes, not its activities. Secondly, the issue as to what an organization's purposes are is to be resolved in light of the totality of the facts and circumstances in a particular case. Lastly, the burden is upon the organization claiming exemption to establish that its operations are exclusively in furtherance of exempt purposes and that it does not operate for the benefit of private interests. Failure to provide relevant information is itself a sufficient basis for the Service to refuse to recognize the organization's exemption.

Martin S. Ackerman Foundation v. Commissioner, T.C. Memo. 1986-385, involved a small private foundation created by an attorney who specialized in art related legal matters. The

attorney and his wife were sole shareholders in Sovereign American Arts Corp., a private art dealership. After 11 years of being funded solely by Mr. Ackerman, the foundation began receiving "contributions" from individuals who had purchased paintings, books, and other works of art from Sovereign. In return for their purchases, Mr. Ackerman, in his role as trustee of the private foundation, would assist the individuals in donating the art works they had purchased to museums. In lieu of receiving a fee for this assistance, Mr. Ackerman would suggest that the individuals make a contribution to the foundation. The value of the contribution would then be deducted on the individuals income tax return. The Court held the foundation's activities benefitted the private interests of Mr. Ackerman by attracting clients to his law practice and by increasing the profits of the art dealership, Sovereign.

Similarly, Rev. Rul. 76-206, 1976-1 C.B. 154, describes a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station. To do this, the organization sought program sponsors, urged the public to patronize the sponsors, solicited subscriptions to the station's program guide and distributed promotional materials. While acknowledging the educational purpose of the organization, the Service denied it exemption under section 501(c)(3) of the Code because the organization's activities benefitted the for-profit radio station in more than an incidental way, thus serving private interests. The Rev. Rul., citing Benedict Ginsberg v. Commissioner, 46 T.C. 47 (1966), points out that although an incidental private benefit will not destroy the qualification of an otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving a private interest.

In Better Business Bureau of Washington, D.C. v. United States, 316 U.S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

As in the cases just cited, you appear to have been created to serve both an exempt purpose and a non-exempt purpose. Your primary objective, as evidenced by the facts and circumstances you have presented, seems to be to benefit the clients of [REDACTED], and the company itself, by offering a related service. The exempt purpose of ultimately benefiting charities is incidental to your primary purpose of enhancing the business relationship between the [REDACTED] and its clients. Accordingly, we are unable to conclude that you are described in section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code because you are not operated for charitable purposes within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. In addition, you are not organized or operated for public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you are designed to promote the private benefit of your creators in more than an insubstantial manner.

You are required to file federal income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia

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determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service
1111 Constitution Avenue
Washington, D.C. 20224
Attn: [REDACTED]

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

cc: [REDACTED]

cc: [REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
ode	[REDACTED]	[REDACTED]					
y name	[REDACTED]	[REDACTED]					
ite	5/29/90	5/31/90					